

EXHIBIT C

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL)
5 PRESCRIPTION) MDL No. 2804
6 OPIATE LITIGATION)
7 _____) Case No.
8) 1:17-MD-2804
9)
10 THIS DOCUMENT RELATES) Hon. Dan A.
11 TO ALL CASES) Polster
12)

13 THURSDAY, JUNE 11, 2020
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17 Remote videoconferenced hearing
18 held before Special Master David Cohen
19 commencing at 2:05 p.m. EST, on the above
20 date, before Carrie A. Campbell, Registered
21 Diplomate Reporter and Certified Realtime
22 Reporter.
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26 GOLKOW LITIGATION SERVICES
27 877.370.3377 ph | 917.591.5672 fax
28 deps@golkow.com
29

1 A P P E A R A N C E S:
2 (OF SPEAKING PARTIES)
3

4 MOTLEY RICE LLC
5 BY: DAVID ACKERMAN
6 dackerman@motleyrice.com
7 LINDA SINGER
8 lsinger@motleyrice.com
9 401 Ninth Street NW, Suite 1001
10 Washington, DC 20004
11 (202) 232-5504

12 and

13 FARRELL LAW
14 BY: PAUL FARRELL, JR.
15 paul@farrell.law
16 422 Ninth Street, 3rd Floor
17 Huntington, West Virginia 25701
18 (304) 523-7285

19 and

20 KELLER ROHRBACK LLP
21 BY: DEREK W. LOESER
22 dloeser@kellerrohrback.com
23 1201 Third Avenue, Suite 3200
24 Seattle, Washington 98101
25 (206) 623-1900

 and

 SPANGENBERG SHIBLEY & LIBER LLP
 BY: PETER WEINBERGER
 pweinberger@spanglaw.com
 1001 Lakeside Avenue East
 Cleveland, Ohio 44114
 (216) 600-0114

 and

1 CARELLA BYRNE CECCHI BRODY AGNELLO,
P.C.

2 BY: ZACHERY S. BOWER
ZBower@carellabyrne.com

3 5 Becker Farm Road
Roseland, New Jersey 07068
4 (973) 994-1700
Counsel for Plaintiffs

5
6

JONES DAY
7 BY: TARA A. FUMERTON
tfumerton@jonesday.com
8 77 West Wacker
Chicago, Illinois 60601-1692
9 (312) 782-3939
Counsel for Walmart

10
11

12 BARTLIT BECK LLP
BY: KATERINE M. SWIFT
13 kswift@bartlit-beck.com
54 West Hubbard Street, Suite 300
14 Chicago, Illinois 60654
(312) 494-4400
15 Counsel for Walgreens

16

17 ZUCKERMAN SPAEDER LLP
BY: PAUL B. HYNES, JR.
18 phynes@zuckerman.com
1800 M Street NW, Suite 1000
19 Washington, DC 20036-5807
(202) 778-1800
20 Counsel for CVS Indiana, LLC, and
CVS RX Services, Inc.

21

22 (Additional appearances provided upon
request.)

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25

1 you applied search terms to a
2 central -- central source and came up
3 with an Oklahoma document there. You
4 wouldn't produce it if it's a
5 category 2 document.

6 So I actually think that that's
7 a reasonable approach to discovery in
8 Track 3, which is to take the search
9 terms, you've already gathered the
10 documents, there's no burden on
11 gathering them, the only thing that
12 you're doing is running the search
13 terms as against those documents just
14 as you were running the search terms
15 as against any other document source,
16 and then going through and doing your
17 privilege review, your relevance
18 review, I suppose your determining of
19 whether it's a category 1 or a
20 category 2 document and producing it.

21 MR. LOESER: And just to be
22 clear, Special Mater Cohen, if it's a
23 hit on a category 1 document, then it
24 should be produced, even if it has
25 nothing to do with Ohio. And for us,

1 that's one of the major concerns, is
2 that that screen that should be used
3 should not screen out category 1
4 documents. If it's category 2, okay,
5 it's screened to Ohio, but the
6 national scope documents, which, you
7 know, in the ProPublica article is all
8 talking about the national scope
9 issues. If those documents are hit by
10 the search terms, they should
11 absolutely be produced.

12 MS. FUMERTON: So, Special
13 Master Cohen, a couple comments on
14 that. One is that I do think --

15 MR. LOESER: I'm sorry, Tara.
16 Special Master Cohen, is that
17 consistent with what you're saying, or
18 are we misreading that?

19 SPECIAL MASTER COHEN: No, that
20 seems consistent. And arguably the
21 documents that you're referring to
22 that are category 1 documents that hit
23 on search terms that were included
24 within the federal government document
25 group should have been identified

1 anyway. They should have been
2 produced by virtue of normal
3 discovery, unless there was some
4 reason they just weren't within the
5 universe of documents that were
6 searched.

7 MS. FUMERTON: Yeah, just a
8 couple of comments. And here's my
9 concern, and perhaps, Special Master
10 Cohen, you're not concerned by this.

11 But when you say you don't see
12 how it could reveal information, it
13 would reveal custodians, for example,
14 that the DOJ may have particular
15 interest in for whatever reason. That
16 is going to give insight into that
17 issue because it's going to reveal
18 potentially based on the source how
19 you produce metadata, you know, what
20 custodian the DOJ particularly was
21 interested in and for whatever reason
22 was interested in them, right. I
23 mean, there hasn't been a lawsuit
24 that's filed. Again, this is a
25 confidential, ongoing investigation.

1 There are different theories that are
2 being espoused that was revealed in
3 the leak letter, I'm not sharing
4 anything inappropriate there, but it's
5 not a public nuisance theory that
6 plaintiffs are -- that the DOJ is
7 pursuing here.

8 And so it would reveal
9 additional information about the
10 ongoing government investigation if
11 you required us to do this, and what I
12 would say is it's unnecessary.
13 Because based on all of your other
14 rulings, plaintiffs are going to get
15 the custodians, it's going to be
16 expanded to the entire state of Ohio,
17 which was not the case before, and
18 it's going to be related to
19 dispensing, which it was not before.

20 So plaintiffs keep saying that
21 this stuff should have been produced
22 before, again, it's a different
23 targeted investigation, it's not the
24 same scope as plaintiffs' claims, and
25 so I disagree that necessarily it

1 would have revealed -- even for
2 category 1 documents that it should
3 have been produced given that it's a
4 different scope and a different
5 target.

6 So, again, with your limiters,
7 which I agree with at the very minimum
8 would be appropriate, I still think
9 that doing this would reveal
10 information about the DOJ ongoing
11 investigation if you were requiring us
12 to do it.

13 SPECIAL MASTER COHEN: You
14 know, Tara, the DOJ investigation
15 would have been focused, I imagine, on
16 specific pharmacists which are
17 probably category 2 documents from
18 different places, from Oklahoma. And
19 you wouldn't be producing those
20 pursuant to what we just talked about,
21 rather you would be producing
22 category 1 documents from perhaps
23 custodians that weren't named in the
24 MDL but they're category 1 documents.
25 A category 1 document is by definition

1 a -- you know, a nonspecific
2 jurisdictional type of document that
3 applies to an overriding policy or
4 procedure.

5 And so I'm not -- I take -- I
6 understand your argument, but I don't
7 think I agree that it's likely that
8 the documents you would produce
9 pursuant to such a search would
10 identify, quote/unquote, targets of
11 the investigation because we're not
12 talking about pharmacists' specific
13 documents that you would be producing.

14 MS. FUMERTON: Well, a couple
15 comments on that.

16 One, I mean, assuming again, a
17 running objection. I see where you're
18 going with it. I would at a minimum
19 want to exclude sort of the obvious
20 stuff. For example, you know, they
21 talked about the million pages, that
22 was really like 850,000. I mean, I'm
23 not quibbling there, but also the MDL
24 production was reproduced, you know,
25 expert reports, deposition

1 transcripts, individual custodians
2 that are pharmacists or market
3 managers in Oklahoma -- again, I'm
4 using that an example because I don't
5 want anyone to quote me on the
6 Oklahoma later, that's just an
7 example -- that we wouldn't have to
8 run any sort of additional search term
9 through those because those would sort
10 of on their face be silly to run.

11 But I do think you're going to
12 potentially reveal information about
13 the ongoing investigation if you
14 require us to do this. And so I
15 would --

16 SPECIAL MASTER COHEN: I'm
17 sympathetic to that, as you know. So
18 here's how I want you to proceed. I
19 think it is appropriate for you to run
20 the search terms, let's call it the
21 federal document database, which are,
22 as you say, is duplicative of, for
23 example, the MDL documents. Obviously
24 you don't have to run them against the
25 MDL documents you've already run.

1 To the extent that those hits
2 are clearly category 2 documents or
3 anywhere other than Ohio, then they
4 don't need to be produced just as any
5 other category 2 documents for
6 anywhere outside of Ohio from any
7 other source don't need to be
8 produced.

9 MR. FARRELL: Judge, can I
10 raise an issue here real quick? I
11 don't know if Carrie can let screen
12 share. I actually have DR 2 up on my
13 screen with the difference between
14 category 1 and category 2, and I
15 know --

16 SPECIAL MASTER COHEN: Paul,
17 you're interrupting me. Let me
18 finish. I know the difference between
19 2 and 3. We'll come back to your
20 point, but let me just finish.

21 And, Tara, you would produce
22 those documents, especially the
23 category 1 documents, which frankly is
24 the focus. You would produce those
25 category 1 documents and obviously you